



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

June 8, 1939

Hon. Charley Lookhart  
State Treasurer  
Austin, Texas

Dear Sir:

Opinion No. O-239  
Re: Authority of Chief Clerk to State  
Treasurer to act as Treasurer in  
the absence of his superior officer.

By your letter of June 1, 1939, you request the opinion of this Department upon the question as to whether or not, in the absence of the State Treasurer, the Chief Clerk of that Department has authority to sign his own name, with the words "Acting State Treasurer" following his name to State of Texas Treasury Certificates to be issued to the Republic National Bank of Dallas, covering Old Age Assistance Warrants submitted to the Treasurer.

The office of State Treasurer is an elective constitutional office; however, the authority and duty of the State Treasurer are not prescribed by the Constitution, but Section 23 of Article 4 of the Constitution of the State of Texas merely states that such Officer shall "perform such duties as are or may be required of him by law."

Article 4376 of the Revised Civil Statutes of Texas provides as follows:

"Whenever the Treasurer, from sickness, unavoidable absence, or other cause, is not able to act, the Chief Clerk shall sign his own name as "Acting Treasurer" and do such other acts and things as the State Treasurer himself might legally do. The legal acts and signatures of such Chief Clerk as Acting Treasurer, shall be as valid as the acts and signatures of the Treasurer himself."

The authority of the Chief Clerk to act in the place and stead of the State Treasurer, upon the happening of the prescribed conditions, therefore, exists by virtue of the above statute. There is involved no unconstitutional

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delegation or deprivation of authority, for the authority of the Treasurer and the duties imposed upon him are not derived from the Constitution, but from the Legislature. The authority having been vested in the Legislature to prescribe the duties to attach to the office of State Treasurer, there is nothing to prohibit the Legislature from authorizing, as it has in this act, the performance of those duties by the Chief Clerk to the Treasurer, as Acting Treasurer, under the prescribed conditions contained in the statute itself. *Pfeffer vs. Mahnke, et al* (Comm. of Appeals, Sec. B; Opinion adopted by the Supreme Court), 260 S. W. 1031.

You are, therefore, advised that, in the absence of the State Treasurer, the Chief Clerk to the Treasurer has authority to sign his own name with the words "Acting State Treasurer" following his name, to the State of Texas Treasury Certificates to be issued to the Republic National Bank of Dallas, Texas, covering Old Age Assistance Warrants submitted to the State Treasurer.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *R. W. Fairchild*  
R. W. Fairchild  
Assistant

RWF:PBP

APPROVED:

*Guadalupe Mann*  
ATTORNEY GENERAL OF TEXAS

